IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.980 OF 2003

Dadar Avanti Co-operative Housing)
Society Ltd. having its office)
at Kesturchand Mills Compound,)
Senapati Bapat Marg, Dadar (West))
Bombay-400 028.)..PETITIONER

Versus

1.State of Maharashtra)
2.Hon'ble State Minister (Co-operation))
Government of Maharashtra,Mantralaya)
Mumbai-400 032.)
3.Joint Registrar, Co-op.Societies,)
G-North Ward, Bombay Division, 6th)
Floor, Malhotra House, Fort,)
Mumbai-400 001.)
4.Deputy Registrar, Bombay Division,)
6th Floor, Malhotra House, Fort,)
Mumbai-400 001.)
5. Dr. Mrs. Shaila Anand Nerkar)
6.Dr.Anand Ramchandra Nerkar,)
Both of Mumbai, Indian Inhabitants)
having their address at Flat No.3 & 4)
Avanti Apartments, Senapati Bapat)
Marg, Dadar (West), Mumbai-400 028.)..RESPONDENTS

Ms.Snehal Paranjpe and Mr. Arif S. Doctor i/b.Kanga & Co.,

for the Petitioner.

Mr. K.R. Belosey, A.G.P. for Respondent Nos. 1 to 4

Mr. A.S. Desai, for Respondents 5 and 6.

CORAM: F.I. REBELLO J.

DATE : 2nd December, 2004

ORAL JUDGMENT:

1. By the present petition the petitioner society seeks to impugn the order dated 30th March, 1998 and 19th March, 2002 passed by the Respondent Nos. 4 and 2 respectively being Exhibit "F" and "H" to the petition.

2. A few facts may be set out. Respondent Nos. 5 and 6 had filed Appeals before the Deputy Registrar, Co-operative Societies, under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960. It was the case of the said respondents that they had applied for membership of the society. The Respondents were informed by the petitioners by letter dated 16th November, 1988 and 20th November, 1988 that their application for membership is under consideration and legal opinion was sought for by the society. A request was also made to forward the original agreements. it was the case of the respondents that the petitioners did not communicate their acceptance within the stipulated period of three months from the date of receipt of the application and consequently they are deemed members of the petitioner society under Section

22(2) of the M.C.S. Act. The petitioners by letter of May, 1989 intimated the respondents that their application for membership had been rejected. In the Appeal it was the case of the respondents that the rejection has no consequence and consequently they were entitled to be treated as deemed members.The Application/Appeal was preferred some time in the year 1997. The Deputy Registrar, however, by the impugned order of 30th March, 1998 was pleased to allow the appeal and issued a declaration that the Respondent Nos. 5 and 6 are declared as deemed members of the petitioner society.

3. The petitioners being aggrieved by the said order preferred a Revision before the 3rd Respondent against the order passed in both the appeals. The 3rd respondent on consideration of the arguments advanced on behalf of the petitioners and Respondent Nos. 5 and 6 was pleased to hold that the Respondent Nos. 5 and 6 had filed Appeal after a long delay and that the reasons for the delay could not be accepted. The 3rd respondent also held that the order rejecting the application for membership was communicated to Respondent Nos. 5 and 6 by letter dated 20th May, 1989. The respondents No.5 and 6 were fully aware of the rejection and inspite of that they did not take out any proceedings. They had relied on provisions of Section 22(2) which came into effect on 2nd January, 1997 and had filed Appeal claiming deemed membership. The third respondent also held that the 4th respondent had not taken into consideration the correspondence exchanged between the parties and consequently

the contention of non-communication of the decision was not proper and justified and accordingly allowed the Revision Application.

4. The Respondent Nos. 5 and 6 preferred Revision Applications before the State Government which came to be allowed by order dated 19th March, 2002. In exercise of the powers of Revision the State Government held relying on the judgment of this Court that if a Co-operative Society did not take decision on the membership application of any eligible member within three months then the said person becomes deemed member of the society. In the instant case the petitioners did not take any decision on the membership application of Respondent Nos. 5 and 6 within three months nor had the petitioners presented any evidence that the respondents No.5 and 6 are unfit to become member of the society according to the Bye-laws. Accordingly the 2nd respondent allowed the Revision Applications.

5. At the outset it may be mentioned that the petitioners in respect of admitting Respondent Nos. 5 and 6 as members in the matter of change of user of the premises have preferred a Petition which has been dismissed. An Appeal has been preferred which is admitted and pending before the Court. It is no doubt true that the learned Counsel pointed out that decision on that point would have an important bearing on the issue in the present petition. However, in my opinion the petition need not be adjourned as the order passed herein can

always be made subject to the decision that may be passed by the Appellate Bench of this Court in the pending appeal. It is on this basis that the petition can be heard and disposed of.

6. At the hearing of this petition the principal challenge as raised on behalf of the petitioner is that the second revision as filed by the respondent Nos. 5 and 6 before the State Government, Respondent No.1 was not maintainable under Section 154 of the M.C.S. Act is concerned. It was also sought to be argued that there was much delay in filing the Appeal and consequently also the application ought to be rejected on that count. Reliance has been placed for the contention that the second revision is not maintainable on the judgments of three learned Single Judges in the matter of Bhupendra Villa Premises Co-operative Society Ltd. & Anr. v. Chandrakant G. Shah & Ors., 2001 (2) Mh.L.J. 834, in the case of Ramesh T. Goplani v. Janata Sahakari Bank Ltd., Kalyan & Anr., 2000 (3) Mh.L.J.115 and in the case of Khamgaon Urban Co-operative Bank Ltd. & Anr. vs. Deepak s/o.Wamanrao Ware & Ors., 2003 (1) Mh.L.J.10. Reference is also made to a Judgment of the Apex Court in the matter of Section 115 of the C.P.C. as amended in the State of Uttar Pradesh to point out that similar language as contained in Section 154 had been construed and the Apex Court had held that against order passed in Revision a Second Revision would not be maintainable. Reliance for that purpose is placed on the judgment of the Apex Court in the case of

Vishesh Kumaer v. Shanti Prasad, AIR 1980 SC 892.

. On the other hand on behalf of the respondents their learned Counsel relies on the judgment of the Division Bench of this Court in the case of Andromeda Co-operative Housing Society Ltd. v. State of Maharashtra & Ors., in Writ Petition NO.4 of 2000 decided on 10th October, 2000 to contend that the second revision at the behest of a party who was not a Revision Applicant in the first Revision Application would be maintainable. It is also contended that the petitioners herein had not raised any objection to the maintainability of the second Revision Application before the State Government. Once the objection was not raised it would not be open to the petitioners herein to now raise the objection on the ground of lack of jurisdiction. Reliance was placed again on the judgment of Ramesh T.Gopalani (supra). In so far as the issue of delay is concerned it is contended that Section 22 came to be amended in the year 1997 pursuant to which it was open to the party to apply for a declaration of membership. In law however the respondent Nos. 5 and 6 were deemed to be members. In order to get a positive declaration of their membership right they had applied under Section 22. There was no bar nor was any limitation imposed by law on the parties so applying if otherwise a party fell within the concept of deemed membership under Section 22(2) of the M.C.S. Act.

7. The issues, therefore, really would be (1) whether the second revision under Section 154 of the M.C.S. Act is

maintainable and (2) whether the application by Respondent Nos. 5 and 6 under Section 22(2) for a declaration was belated and was barred by limitation and hence not maintainable.

. Dealing with the first point, it will be necessary to reproduce sub-sections (1) and (2) of Section 154 of the M.C.S. Act, which read as under:-

> **"154. Revisionary Powers of State Government and Registrar.**
>
> (1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of Section 149, where any decision or order has been passed by any subordinate officer and no alppeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer."

A perusal of the said Section, would, therefore, show that it is the State Government or the Registrar who either suo motu or on an application who can exercise the powers of revision. Section 154(1) is, therefore, clear that the exercise of revisional power suo motu or otherwise is either by the State Government or by the Registrar and not by both. This becomes clearer when sub-section (2) of Section 154 is considered namely who shall exercise the power of revision from orders has been set out. In respect of orders passed by the Registrar, Divisional Joint Registrar or a Joint Registrar it is the State Government who can exercise the revisional powers and in respect of orders passed by other authorities the power of Revision will be exercised by the Registrar. The language, therefore, of Section 154(1) and (2) to my mind makes no provision for a second revision from an order passed in Revision. Once one of the revisional authorities has exercised the power of revision, the remedy of revision is exhausted and no second revision would lie. This is the view taken in Bhupendra Villa Premises Co-operative Society Ltd. (supra), Ramesh T. Gopalani (supra) and Khamgaon Urban Co-operative Bank Ltd. (suopra). This view taken is

supported by the interpretation given by the Apex Court to Section 115 of the C.P.C. as amended in the State of U.P. in the case of Vishesh Kumar (supra). The exercise of revision therein by the High Court under Section 115 was to be exercised in cases arising out of original suits of the value of Rs.2,000/- and above. The exercise of revision by the District Court or in any other case including a case arising out of an original suit instituted before 20th September, 1992. The argument advanced was that against the order passed in Revision by the District Court a second Revision would be maintainable before the High Court. This was the controversy which the Apex Court was called upon to decide. The Apex Court noticed that the purpose of the amendment was to classify all cases into two mutually exclusive categories depending on the valuation of the suit out of which they arose. Thereafter considering the intention of the Legislature the Court noted that the regard must be had to the principle that the construction given to a statute should be such as would advance the object of the legislation and suppress the mischief sought to be cured by it. After saying so the Apex Court observed as under:-

> "It seems to us that to recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme."

Thus if these judgments are taken into consideration clearly

the 1st Respondent could not have exercised revisional jurisdiction. Would the order of the 1st respondent be liable to set aside on the ground that it had no jurisdiction to entertain the second revision application. The law on the subject of exercise of jurisdiction to my mind is clear. A Court having no jurisdiction cannot exercise that jurisdiction. Assumption of jurisdiction or by Agreement by the parties, can confer no jurisdiction on the Court or the Tribunal which otherwise did not possess that jurisdiction. In the instant case, however, there is a Judgment of a Division Bench of this Court which purports to take a view that the second revision at the instance of a party who was not a petitioner in the first revision application would be maintainable. That judgment was delivered on 10th October, 2000. The judgments of the earlier single Judges of this Court in Bhupendra Villa Premises Co-operative Society Ltd. (supra) and Ramesh T. Gopalani (supra) were not brought to the attention of the learned Division Bench. The question then would arise as to whether the decision in Andromeda Co-operative Housing Society Ltd. (supra) decided on 10th October, 2000 can be said to lay down the proposition of law and/or its ratio that a second revision is maintainable. The well known test for carving out the ratio of the judgment are firstly that the matter was in issue; secondly that the issue needs to have been decided and lastly that it is decided by giving reasons. The learned Division Bench seems to have proceeded on an assumption that the second revision at the instance of a party who was not a party in the first revision

application was maintainable. The second aspect of the matter was that the Joint Registrar heard the matter and passed an order against which a petition was filed without moving the State Government. The Court noted that this was under an apprehension that second Revision may be barred. The Court then observed that so far as the petitioners are concerned it is the 1st revision against the order of the Joint Registrar. It is in that context that the learned Division Bench proceeded to hold that the revision would be maintainable. Also the petition was not admitted and disposed off on merits. It was disposed off at the stage of admission. In my opinion clearly the order disposing of the petition on the ground that alternative remedy was available really cannot be said to constitute a ratio of the judgment in the absence of the learned Division Bench having examined the provisions of Section 154(1)(2). If the said provisions had been examined and considered and/or reliance has been placed on any other judgment wherein such a construction had been given and the same had been approved by the Division Bench then only could it be said that it was a ratio of that judgment. In my opinion, therefore, the observations about maintainability of second revision in Andromeda Co-operative Housing Society Ltd. (supra) really cannot be said to constitute the ratio of the judgment.

7. Having said so the question really is whether this Court in exercise of its extra ordinary jurisdiction should interfere with the impugned order. As pointed out earlier the

main challenge in this petition is to maintainability of the second revision application. In so far as the merits of the matter are concerned that is in issue before the Appellate Bench of this Court in another petition which is pending before it. Another aspect of the matter which needs to be considered is whether the application by the Respondent Nos. 5 and 6 under Section 22(2) was barred on the ground of laches and delay and on account of any limitation. The power of the Registrar to decide whether a person had become deemed member under section 22(2) was conferred after amendment by Act 7 of 1997. Before that there was no jurisdiction conferred on the Registrar to decide whether a period had become deemed member. It is true that would not have prevented a party who contended that he had become a deemed member from taking recourse to other provisions under the Act. That, however, would not mean that otherwise a party who contends that he had become a deemed member by virtue of operation of law i.e. on failure by a society to communicate its decision within three months of an application being made to on satisfying all requirements and its non-communication would be barred on the ground limitation. No such limitation is imposed under Section 22(2) or for that matter by any other provisions under the Act. The right of access to a forum can only be taken away by law. The Limitation Act is one such Act which provides for barring of the right to access and/or remedy. Section 22(2) of the M.C.S.Act imposes no such limitation. It is also not possible to hold that the authorities should have borne in mind ordinarily the period for seeking declaration as the period of

limitation. Once that be the case it is clear that it was open to the party to apply. The second contention as raised by the petitioner must also be rejected.

8. My attention was also invited to the order dated September 13, 2004 in Writ Petition (L) No.2367 of 2004 in Lovelitta Co-op. Housing Society Ltd. Vs. Mr. M.B. Gupta & Another to contend that the law as laid down by the Division Bench has been accepted by this Court. On consideration of the said judgment it is clear that the issues raised before this Court were not raised and this Court merely proceeded on the basis of the judgment of the Division Bench which has now been considered and clarified.

9. Having said so as pointed out earlier even after considering the law that the second revision is not maintainable, should this Court really interfere with the order of the 2nd Respondent in the exercise of its extra ordinary jurisdiction. In my opinion the order of the 2nd respondent otherwise was within the parameters or predicates of Section 22 of the M.C.S. Act. This Court itself in the exercise of its extra ordinary jurisdiction on the record before it could have exercised its power of superintendence. The rights of the petitioners will in no way be defeated by this failure to exercise its extra ordinary jurisdiction as the issue about conversion from residential to non-residential

and consequent admission of membership is in issue before the Appellate Bench of this Court. Once that be the case in my opinion this would not be a fit case for this Court to exercise its extra ordinary jurisdiction on the facts and circumstances of the case. The disposal of this Petition will be subject to the pending Appeal between the parties.

10. In the light of that Rule discharged. There shall be no order as to costs.

(F.I.REBELLO,J.)